

SHB 1300 - S COMM AMD

By Committee on Health & Long-Term Care

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 18.130.040 and 2004 c 38 s 2 are each amended to read  
4 as follows:

5 (1) This chapter applies only to the secretary and the boards and  
6 commissions having jurisdiction in relation to the professions licensed  
7 under the chapters specified in this section. This chapter does not  
8 apply to any business or profession not licensed under the chapters  
9 specified in this section.

10 (2)(a) The secretary has authority under this chapter in relation  
11 to the following professions:

12 (i) Dispensing opticians licensed and designated apprentices under  
13 chapter 18.34 RCW;

14 (ii) Naturopaths licensed under chapter 18.36A RCW;

15 (iii) Midwives licensed under chapter 18.50 RCW;

16 (iv) Ocularists licensed under chapter 18.55 RCW;

17 (v) Massage operators and businesses licensed under chapter 18.108  
18 RCW;

19 (vi) Dental hygienists licensed under chapter 18.29 RCW;

20 (vii) Acupuncturists licensed under chapter 18.06 RCW;

21 (viii) Radiologic technologists certified and X-ray technicians  
22 registered under chapter 18.84 RCW;

23 (ix) Respiratory care practitioners licensed under chapter 18.89  
24 RCW;

25 (x) Persons registered under chapter 18.19 RCW;

26 (xi) Persons licensed as mental health counselors, marriage and  
27 family therapists, and social workers under chapter 18.225 RCW;

28 (xii) Persons registered as nursing pool operators under chapter  
29 18.52C RCW;

1 (xiii) Nursing assistants registered or certified under chapter  
2 18.88A RCW;

3 (xiv) Health care assistants certified under chapter 18.135 RCW;

4 (xv) Dietitians and nutritionists certified under chapter 18.138  
5 RCW;

6 (xvi) Chemical dependency professionals certified under chapter  
7 18.205 RCW;

8 (xvii) Sex offender treatment providers and certified affiliate sex  
9 offender treatment providers certified under chapter 18.155 RCW;

10 (xviii) Persons licensed and certified under chapter 18.73 RCW or  
11 RCW 18.71.205;

12 (xix) Denturists licensed under chapter 18.30 RCW;

13 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

14 (xxi) Surgical technologists registered under chapter 18.215 RCW;

15 and

16 (xxii) Recreational therapists.

17 (b) The boards and commissions having authority under this chapter  
18 are as follows:

19 (i) The podiatric medical board as established in chapter 18.22  
20 RCW;

21 (ii) The chiropractic quality assurance commission as established  
22 in chapter 18.25 RCW;

23 (iii) The dental quality assurance commission as established in  
24 chapter 18.32 RCW;

25 (iv) The board of hearing and speech as established in chapter  
26 18.35 RCW;

27 (v) The board of examiners for nursing home administrators as  
28 established in chapter 18.52 RCW;

29 (vi) The optometry board as established in chapter 18.54 RCW  
30 governing licenses issued under chapter 18.53 RCW;

31 (vii) The board of osteopathic medicine and surgery as established  
32 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
33 18.57A RCW;

34 (viii) The board of pharmacy as established in chapter 18.64 RCW  
35 governing licenses issued under chapters 18.64 and 18.64A RCW;

36 (ix) The medical quality assurance commission as established in  
37 chapter 18.71 RCW governing licenses and registrations issued under  
38 chapters 18.71 and 18.71A RCW;

- 1 (x) The board of physical therapy as established in chapter 18.74  
2 RCW;
- 3 (xi) The board of occupational therapy practice as established in  
4 chapter 18.59 RCW;
- 5 (xii) The nursing care quality assurance commission as established  
6 in chapter 18.79 RCW governing licenses and registrations issued under  
7 that chapter;
- 8 (xiii) The examining board of psychology and its disciplinary  
9 committee as established in chapter 18.83 RCW; and
- 10 (xiv) The veterinary board of governors as established in chapter  
11 18.92 RCW.

12 (3) In addition to the authority to discipline license holders, the  
13 disciplining authority has the authority to grant or deny licenses  
14 (~~based on the conditions and criteria established in this chapter and~~  
15 ~~the chapters specified in subsection (2) of this section~~). (~~This~~  
16 ~~chapter also governs any investigation, hearing, or proceeding relating~~  
17 ~~to denial of licensure or issuance of a license conditioned on the~~  
18 ~~applicant's compliance with an order entered pursuant to RCW 18.130.160~~  
19 ~~by~~) The disciplining authority may also grant a license subject to  
20 conditions.

21 (4) All disciplining authorities shall adopt procedures to ensure  
22 substantially consistent application of this chapter, the Uniform  
23 Disciplinary Act, among the disciplining authorities listed in  
24 subsection (2) of this section.

25 NEW SECTION. Sec. 2. (1) The legislature finds that in order to  
26 protect the public and to promote the safety of and confidence in the  
27 health care system, the disciplining authority may deny an application  
28 for licensure or grant a license with conditions if the applicant:

29 (a) Has had his or her license to practice any health care  
30 profession suspended, revoked, or restricted, by competent authority in  
31 any state, federal, or foreign jurisdiction;

32 (b) Has committed any act defined as unprofessional conduct for a  
33 license holder under RCW 18.130.180;

34 (c) Has been convicted or is subject to current prosecution or  
35 pending charges of a crime involving moral turpitude or a crime  
36 identified in RCW 43.43.830. For purposes of this section, conviction  
37 includes all instances in which a plea of guilty or nolo contendere is

1 the basis for the conviction and all proceedings in which the  
2 prosecution or sentence has been deferred or suspended. At the request  
3 of an applicant for an original license whose conviction is under  
4 appeal, the disciplining authority may defer decision upon the  
5 application during the pendency of such a prosecution or appeal;

6 (d) Fails to prove that he or she is qualified in accordance with  
7 the provisions of this chapter, the chapters identified in RCW  
8 18.130.040(2), or the rules adopted by the disciplining authority; or

9 (e) Is not able to practice with reasonable skill and safety to  
10 consumers by reason of any mental or physical condition.

11 (i) The disciplining authority may require the applicant, at his or  
12 her own expense, to submit to a mental or physical examination by one  
13 or more licensed health professionals designated by the disciplining  
14 authority. The disciplining authority shall provide written notice of  
15 its requirement for a mental or physical examination which notice shall  
16 include a statement of the specific conduct, event, or circumstances  
17 justifying an examination and a statement of the nature, purpose,  
18 scope, and content of the intended examination. If the applicant fails  
19 to submit to the examination or provide the results of the examination  
20 or any required waivers, the disciplining authority may deny the  
21 application.

22 (ii) An applicant governed by this chapter is deemed to have given  
23 consent to submit to a mental, physical, or psychological examination  
24 when directed in writing by the disciplining authority and further to  
25 have waived all objections to the admissibility or use of the examining  
26 health professional's testimony or examination reports by the  
27 disciplining authority on the grounds that the testimony or reports  
28 constitute privileged communications.

29 (2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not  
30 apply to a decision to deny a license under this section.

31 (3) The disciplining authority shall give written notice to the  
32 applicant of the decision to deny a license or grant a license with  
33 conditions in response to an application for a license. The notice  
34 must state the grounds and factual basis for the action and be served  
35 upon the applicant.

36 (4) A license applicant who is aggrieved by the decision to deny  
37 the license or grant the license with conditions has the right to an  
38 adjudicative proceeding. The application for adjudicative proceeding

1 must be in writing, state the basis for contesting the adverse action,  
2 include a copy of the adverse notice, and be served on and received by  
3 the department within twenty-eight days of the decision. The license  
4 applicant has the burden to establish, by a preponderance of evidence,  
5 that the license applicant is qualified in accordance with the  
6 provisions of this chapter, the chapters identified in RCW  
7 18.130.040(2), and the rules adopted by the disciplining authority.

8 **Sec. 3.** RCW 18.130.050 and 2006 c 99 s 4 are each amended to read  
9 as follows:

10 The disciplining authority has the following authority:

11 (1) To adopt, amend, and rescind such rules as are deemed necessary  
12 to carry out this chapter;

13 (2) To investigate all complaints or reports of unprofessional  
14 conduct as defined in this chapter and to hold hearings as provided in  
15 this chapter;

16 (3) To issue subpoenas and administer oaths in connection with any  
17 investigation, consideration of an application for license, hearing, or  
18 proceeding held under this chapter;

19 (4) To take or cause depositions to be taken and use other  
20 discovery procedures as needed in any investigation, hearing, or  
21 proceeding held under this chapter;

22 (5) To compel attendance of witnesses at hearings;

23 (6) In the course of investigating a complaint or report of  
24 unprofessional conduct, to conduct practice reviews and to issue  
25 citations and assess fines for failure to produce documents, records,  
26 or other items in accordance with section 4 of this act;

27 (7) To take emergency action ordering summary suspension of a  
28 license, or restriction or limitation of the license holder's practice  
29 pending proceedings by the disciplining authority. Consistent with RCW  
30 18.130.370, a disciplining authority shall issue a summary suspension  
31 of the license or temporary practice permit of a license holder  
32 prohibited from practicing a health care profession in another state,  
33 federal, or foreign jurisdiction because of an act of unprofessional  
34 conduct that is substantially equivalent to an act of unprofessional  
35 conduct prohibited by this chapter or any of the chapters specified in  
36 RCW 18.130.040. The summary suspension remains in effect until

1 proceedings by the Washington disciplining authority have been  
2 completed;

3 (8) To use a presiding officer as authorized in RCW 18.130.095(3)  
4 or the office of administrative hearings as authorized in chapter 34.12  
5 RCW to conduct hearings. The disciplining authority shall make the  
6 final decision regarding disposition of the license unless the  
7 disciplining authority elects to delegate in writing the final decision  
8 to the presiding officer;

9 (9) To use individual members of the boards to direct  
10 investigations and to authorize the issuance of a citation under  
11 subsection (6) of this section. However, the member of the board shall  
12 not subsequently participate in the hearing of the case;

13 (10) To enter into contracts for professional services determined  
14 to be necessary for adequate enforcement of this chapter;

15 (11) To contract with licensees or other persons or organizations  
16 to provide services necessary for the monitoring and supervision of  
17 licensees who are placed on probation, whose professional activities  
18 are restricted, or who are for any authorized purpose subject to  
19 monitoring by the disciplining authority;

20 (12) To adopt standards of professional conduct or practice;

21 (13) To grant or deny license applications, and in the event of a  
22 finding of unprofessional conduct by an applicant or license holder, to  
23 impose any sanction against a license applicant or license holder  
24 provided by this chapter;

25 (14) To restrict or place conditions on the practice of new  
26 licensees in order to protect the public and promote the safety of and  
27 confidence in the health care system;

28 (15) To designate individuals authorized to sign subpoenas and  
29 statements of charges;

30 ((+15+)) (16) To establish panels consisting of three or more  
31 members of the board to perform any duty or authority within the  
32 board's jurisdiction under this chapter;

33 ((+16+)) (17) To review and audit the records of licensed health  
34 facilities' or services' quality assurance committee decisions in which  
35 a licensee's practice privilege or employment is terminated or  
36 restricted. Each health facility or service shall produce and make  
37 accessible to the disciplining authority the appropriate records and

1 otherwise facilitate the review and audit. Information so gained shall  
2 not be subject to discovery or introduction into evidence in any civil  
3 action pursuant to RCW 70.41.200(3).

4 NEW SECTION. **Sec. 4.** (1)(a) A licensee must produce documents,  
5 records, or other items that are within his or her possession or  
6 control within twenty-one days of service of a request by a  
7 disciplining authority. If the twenty-one business day limit results  
8 in a hardship upon the licensee, he or she may request for good cause  
9 an extension not to exceed thirty additional days.

10 (b) In the event the licensee fails to produce the documents,  
11 records, or other items as requested by the disciplining authority or  
12 fails to obtain an extension of the time for response, the disciplining  
13 authority may issue a written citation and assess a fine of up to one  
14 hundred dollars per day for each day after the issuance of the citation  
15 until the documents, records, or other items are produced.

16 (c) In no event may the administrative fine assessed by the  
17 disciplining authority exceed five thousand dollars for each  
18 investigation made with respect to the violation.

19 (2) Citations issued under this section must include the following:

20 (a) A statement that the citation represents a determination that  
21 the person named has failed to produce documents, records, or other  
22 items as required by this section and that the determination is final  
23 unless contested as provided in this section;

24 (b) A statement of the specific circumstances;

25 (c) A statement of the monetary fine, which is up to one hundred  
26 dollars per day for each day after the issuance of the citation;

27 (d) A statement informing the licensee that if the licensee desires  
28 a hearing to contest the finding of a violation, the hearing must be  
29 requested by written notice to the disciplining authority within twenty  
30 days of the date of issuance of the citation. The hearing is limited  
31 to the issue of whether the licensee timely produced the requested  
32 documents, records, or other items or had good cause for failure to do  
33 so; and

34 (e) A statement that in the event a licensee fails to pay a fine  
35 within thirty days of the date of assessment, the full amount of the  
36 assessed fine must be added to the fee for renewal of the license  
37 unless the citation is being appealed.

1 (3) RCW 18.130.165 governs proof and enforcement of the fine.

2 (4) Administrative fines collected under this section must be  
3 deposited in the health professions account created in RCW 43.70.320.

4 (5) Issuance of a citation under this section does not preclude the  
5 disciplining authority from pursuing other action under this chapter.

6 (6) The disciplining authority shall establish and make available  
7 to licensees the maximum daily monetary fine that may be issued under  
8 subsection (2)(c) of this section. The disciplining authority shall  
9 review the maximum fine on a regular basis, but at a minimum, each  
10 biennium.

11 **Sec. 5.** RCW 18.130.140 and 1984 c 279 s 14 are each amended to  
12 read as follows:

13 An individual who has been disciplined (~~(or)~~), whose license has  
14 been denied, or whose license has been granted with conditions by a  
15 disciplining authority may appeal the decision as provided in chapter  
16 34.05 RCW.

17 **Sec. 6.** RCW 18.130.150 and 1997 c 58 s 831 are each amended to  
18 read as follows:

19 A person whose license has been suspended (~~(or revoked)~~) under this  
20 chapter may petition the disciplining authority for reinstatement after  
21 an interval as determined by the disciplining authority in the order.  
22 A person whose license has been revoked under this chapter may petition  
23 the disciplining authority for reinstatement no sooner than five years  
24 after the effective date of the revocation. The disciplining authority  
25 shall hold hearings on the petition and may deny the petition or may  
26 order reinstatement and impose terms and conditions as provided in RCW  
27 18.130.160 and issue an order of reinstatement. The disciplining  
28 authority may require successful completion of an examination as a  
29 condition of reinstatement.

30 A person whose license has been suspended for noncompliance with a  
31 support order or (~~(a residential or)~~) visitation order under RCW  
32 74.20A.320 may petition for reinstatement at any time by providing the  
33 secretary a release issued by the department of social and health  
34 services stating that the person is in compliance with the order. If  
35 the person has continued to meet all other requirements for

1 reinstatement during the suspension, the secretary shall automatically  
2 reissue the person's license upon receipt of the release, and payment  
3 of a reinstatement fee, if any.

4 **Sec. 7.** RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are  
5 each reenacted and amended to read as follows:

6 Upon a finding, after hearing, that a license holder (~~or~~  
7 ~~applicant~~) has committed unprofessional conduct or is unable to  
8 practice with reasonable skill and safety due to a physical or mental  
9 condition, the disciplining authority may consider the imposition of  
10 sanctions, taking into account any prior findings of fact under RCW  
11 18.130.110, any stipulations to informal disposition under RCW  
12 18.130.172, and any action taken by other in-state or out-of-state  
13 disciplining authorities, and issue an order providing for one or any  
14 combination of the following:

- 15 (1) Revocation of the license;
- 16 (2) Suspension of the license for a fixed or indefinite term;
- 17 (3) Restriction or limitation of the practice;
- 18 (4) Requiring the satisfactory completion of a specific program of  
19 remedial education or treatment;
- 20 (5) The monitoring of the practice by a supervisor approved by the  
21 disciplining authority;
- 22 (6) Censure or reprimand;
- 23 (7) Compliance with conditions of probation for a designated period  
24 of time;
- 25 (8) Payment of a fine for each violation of this chapter, not to  
26 exceed five thousand dollars per violation. Funds received shall be  
27 placed in the health professions account;
- 28 (9) Denial of the license request;
- 29 (10) Corrective action;
- 30 (11) Refund of fees billed to and collected from the consumer;
- 31 (12) A surrender of the practitioner's license in lieu of other  
32 sanctions, which must be reported to the federal data bank.

33 Any of the actions under this section may be totally or partly  
34 stayed by the disciplining authority. Safeguarding the public's health  
35 and safety is the paramount responsibility of every disciplining  
36 authority and in determining what action is appropriate, the  
37 disciplining authority must first consider what sanctions are necessary

1 to protect or compensate the public. Only after such provisions have  
2 been made may the disciplining authority consider and include in the  
3 order requirements designed to rehabilitate the license holder (~~or~~  
4 ~~applicant~~). All costs associated with compliance with orders issued  
5 under this section are the obligation of the license holder (~~or~~  
6 ~~applicant~~).

7 The licensee (~~or—applicant~~) may enter into a stipulated  
8 disposition of charges that includes one or more of the sanctions of  
9 this section, but only after a statement of charges has been issued and  
10 the licensee has been afforded the opportunity for a hearing and has  
11 elected on the record to forego such a hearing. The stipulation shall  
12 either contain one or more specific findings of unprofessional conduct  
13 or inability to practice, or a statement by the licensee acknowledging  
14 that evidence is sufficient to justify one or more specified findings  
15 of unprofessional conduct or inability to practice. The stipulation  
16 entered into pursuant to this subsection shall be considered formal  
17 disciplinary action for all purposes.

18 **Sec. 8.** RCW 18.130.165 and 1993 c 367 s 20 are each amended to  
19 read as follows:

20 Where an order for payment of a fine is made as a result of a  
21 citation under section 4 of this act or a hearing under RCW 18.130.100  
22 or 18.130.190 and timely payment is not made as directed in the final  
23 order, the disciplining authority may enforce the order for payment in  
24 the superior court in the county in which the hearing was held. This  
25 right of enforcement shall be in addition to any other rights the  
26 disciplining authority may have as to any licensee ordered to pay a  
27 fine but shall not be construed to limit a licensee's ability to seek  
28 judicial review under RCW 18.130.140.

29 In any action for enforcement of an order of payment of a fine, the  
30 disciplining authority's order is conclusive proof of the validity of  
31 the order of payment of a fine and the terms of payment.

32 **Sec. 9.** RCW 18.130.170 and 1995 c 336 s 8 are each amended to read  
33 as follows:

34 (1) If the disciplining authority believes a license holder (~~or~~  
35 ~~applicant~~) may be unable to practice with reasonable skill and safety  
36 to consumers by reason of any mental or physical condition, a statement

1 of charges in the name of the disciplining authority shall be served on  
2 the license holder ((~~or applicant~~)) and notice shall also be issued  
3 providing an opportunity for a hearing. The hearing shall be limited  
4 to the sole issue of the capacity of the license holder ((~~or~~  
5 ~~applicant~~)) to practice with reasonable skill and safety. If the  
6 disciplining authority determines that the license holder ((~~or~~  
7 ~~applicant~~)) is unable to practice with reasonable skill and safety for  
8 one of the reasons stated in this subsection, the disciplining  
9 authority shall impose such sanctions under RCW 18.130.160 as is deemed  
10 necessary to protect the public.

11 (2)(a) In investigating or adjudicating a complaint or report that  
12 a license holder ((~~or applicant~~)) may be unable to practice with  
13 reasonable skill or safety by reason of any mental or physical  
14 condition, the disciplining authority may require a license holder ((~~or~~  
15 ~~applicant~~)) to submit to a mental or physical examination by one or  
16 more licensed or certified health professionals designated by the  
17 disciplining authority. The license holder ((~~or applicant~~)) shall be  
18 provided written notice of the disciplining authority's intent to order  
19 a mental or physical examination, which notice shall include: (i) A  
20 statement of the specific conduct, event, or circumstances justifying  
21 an examination; (ii) a summary of the evidence supporting the  
22 disciplining authority's concern that the license holder ((~~or~~  
23 ~~applicant~~)) may be unable to practice with reasonable skill and safety  
24 by reason of a mental or physical condition, and the grounds for  
25 believing such evidence to be credible and reliable; (iii) a statement  
26 of the nature, purpose, scope, and content of the intended examination;  
27 (iv) a statement that the license holder ((~~or applicant~~)) has the right  
28 to respond in writing within twenty days to challenge the disciplining  
29 authority's grounds for ordering an examination or to challenge the  
30 manner or form of the examination; and (v) a statement that if the  
31 license holder ((~~or applicant~~)) timely responds to the notice of  
32 intent, then the license holder ((~~or applicant~~)) will not be required  
33 to submit to the examination while the response is under consideration.

34 (b) Upon submission of a timely response to the notice of intent to  
35 order a mental or physical examination, the license holder ((~~or~~  
36 ~~applicant~~)) shall have an opportunity to respond to or refute such an  
37 order by submission of evidence or written argument or both. The  
38 evidence and written argument supporting and opposing the mental or

1 physical examination shall be reviewed by either a panel of the  
2 disciplining authority members who have not been involved with the  
3 allegations against the license holder (~~((or applicant))~~) or a neutral  
4 decision maker approved by the disciplining authority. The reviewing  
5 panel of the disciplining authority or the approved neutral decision  
6 maker may, in its discretion, ask for oral argument from the parties.  
7 The reviewing panel of the disciplining authority or the approved  
8 neutral decision maker shall prepare a written decision as to whether:  
9 There is reasonable cause to believe that the license holder (~~((or  
10 applicant))~~) may be unable to practice with reasonable skill and safety  
11 by reason of a mental or physical condition, or the manner or form of  
12 the mental or physical examination is appropriate, or both.

13 (c) Upon receipt by the disciplining authority of the written  
14 decision, or upon the failure of the license holder (~~((or applicant))~~) to  
15 timely respond to the notice of intent, the disciplining authority may  
16 issue an order requiring the license holder (~~((or applicant))~~) to undergo  
17 a mental or physical examination. All such mental or physical  
18 examinations shall be narrowly tailored to address only the alleged  
19 mental or physical condition and the ability of the license holder (~~((or  
20 applicant))~~) to practice with reasonable skill and safety. An order of  
21 the disciplining authority requiring the license holder (~~((or  
22 applicant))~~) to undergo a mental or physical examination is not a final  
23 order for purposes of appeal. The cost of the examinations ordered by  
24 the disciplining authority shall be paid out of the health professions  
25 account. In addition to any examinations ordered by the disciplining  
26 authority, the licensee may submit physical or mental examination  
27 reports from licensed or certified health professionals of the license  
28 holder's (~~((or applicant's))~~) choosing and expense.

29 (d) If the disciplining authority finds that a license holder (~~((or  
30 applicant))~~) has failed to submit to a properly ordered mental or  
31 physical examination, then the disciplining authority may order  
32 appropriate action or discipline under RCW 18.130.180(9), unless the  
33 failure was due to circumstances beyond the person's control. However,  
34 no such action or discipline may be imposed unless the license holder  
35 (~~((or applicant))~~) has had the notice and opportunity to challenge the  
36 disciplining authority's grounds for ordering the examination, to  
37 challenge the manner and form, to assert any other defenses, and to  
38 have such challenges or defenses considered by either a panel of the

1 disciplining authority members who have not been involved with the  
2 allegations against the license holder ((~~or applicant~~)) or a neutral  
3 decision maker approved by the disciplining authority, as previously  
4 set forth in this section. Further, the action or discipline ordered  
5 by the disciplining authority shall not be more severe than a  
6 suspension of the license, certification, registration, or application  
7 until such time as the license holder ((~~or applicant~~)) complies with  
8 the properly ordered mental or physical examination.

9 (e) Nothing in this section shall restrict the power of a  
10 disciplining authority to act in an emergency under RCW 34.05.422(4),  
11 34.05.479, and 18.130.050(7).

12 (f) A determination by a court of competent jurisdiction that a  
13 license holder ((~~or applicant~~)) is mentally incompetent or mentally ill  
14 is presumptive evidence of the license holder's ((~~or applicant's~~))  
15 inability to practice with reasonable skill and safety. An individual  
16 affected under this section shall at reasonable intervals be afforded  
17 an opportunity, at his or her expense, to demonstrate that the  
18 individual can resume competent practice with reasonable skill and  
19 safety to the consumer.

20 (3) For the purpose of subsection (2) of this section, ((~~an~~  
21 ~~applicant or~~)) a license holder governed by this chapter, by making  
22 application, practicing, or filing a license renewal, is deemed to have  
23 given consent to submit to a mental, physical, or psychological  
24 examination when directed in writing by the disciplining authority and  
25 further to have waived all objections to the admissibility or use of  
26 the examining health professional's testimony or examination reports by  
27 the disciplining authority on the ground that the testimony or reports  
28 constitute privileged communications.

29 **Sec. 10.** RCW 18.130.172 and 2000 c 171 s 29 are each amended to  
30 read as follows:

31 (1) Prior to serving a statement of charges under RCW 18.130.090 or  
32 18.130.170, the disciplinary authority may furnish a statement of  
33 allegations to the licensee ((~~or applicant~~)) along with a detailed  
34 summary of the evidence relied upon to establish the allegations and a  
35 proposed stipulation for informal resolution of the allegations. These  
36 documents shall be exempt from public disclosure until such time as the  
37 allegations are resolved either by stipulation or otherwise.

1           (2) The disciplinary authority and the ((~~applicant~~-or)) licensee  
2 may stipulate that the allegations may be disposed of informally in  
3 accordance with this subsection. The stipulation shall contain a  
4 statement of the facts leading to the filing of the complaint; the act  
5 or acts of unprofessional conduct alleged to have been committed or the  
6 alleged basis for determining that the ((~~applicant~~-or)) licensee is  
7 unable to practice with reasonable skill and safety; a statement that  
8 the stipulation is not to be construed as a finding of either  
9 unprofessional conduct or inability to practice; an acknowledgement  
10 that a finding of unprofessional conduct or inability to practice, if  
11 proven, constitutes grounds for discipline under this chapter; and an  
12 agreement on the part of the licensee ((~~or~~-~~applicant~~)) that the  
13 sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2),  
14 (6), and (8), may be imposed as part of the stipulation, except that no  
15 fine may be imposed but the licensee ((~~or~~-~~applicant~~)) may agree to  
16 reimburse the disciplinary authority the costs of investigation and  
17 processing the complaint up to an amount not exceeding one thousand  
18 dollars per allegation; and an agreement on the part of the  
19 disciplinary authority to forego further disciplinary proceedings  
20 concerning the allegations. A stipulation entered into pursuant to  
21 this subsection shall not be considered formal disciplinary action.

22           (3) If the licensee ((~~or~~-~~applicant~~)) declines to agree to  
23 disposition of the charges by means of a stipulation pursuant to  
24 subsection (2) of this section, the disciplinary authority may proceed  
25 to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

26           (4) Upon execution of a stipulation under subsection (2) of this  
27 section by both the licensee ((~~or~~-~~applicant~~)) and the disciplinary  
28 authority, the complaint is deemed disposed of and shall become subject  
29 to public disclosure on the same basis and to the same extent as other  
30 records of the disciplinary authority. Should the licensee ((~~or~~-  
31 ~~applicant~~)) fail to pay any agreed reimbursement within thirty days of  
32 the date specified in the stipulation for payment, the disciplinary  
33 authority may seek collection of the amount agreed to be paid in the  
34 same manner as enforcement of a fine under RCW 18.130.165.

35           **Sec. 11.** RCW 18.130.180 and 1995 c 336 s 9 are each amended to  
36 read as follows:

1 The following conduct, acts, or conditions constitute  
2 unprofessional conduct for any license holder (~~(or applicant)~~) under  
3 the jurisdiction of this chapter:

4 (1) The commission of any act involving moral turpitude,  
5 dishonesty, or corruption relating to the practice of the person's  
6 profession, whether the act constitutes a crime or not. If the act  
7 constitutes a crime, conviction in a criminal proceeding is not a  
8 condition precedent to disciplinary action. Upon such a conviction,  
9 however, the judgment and sentence is conclusive evidence at the  
10 ensuing disciplinary hearing of the guilt of the license holder or  
11 applicant of the crime described in the indictment or information, and  
12 of the person's violation of the statute on which it is based. For the  
13 purposes of this section, conviction includes all instances in which a  
14 plea of guilty or nolo contendere is the basis for the conviction and  
15 all proceedings in which the sentence has been deferred or suspended.  
16 Nothing in this section abrogates rights guaranteed under chapter 9.96A  
17 RCW;

18 (2) Misrepresentation or concealment of a material fact in  
19 obtaining a license or in reinstatement thereof;

20 (3) All advertising which is false, fraudulent, or misleading;

21 (4) Incompetence, negligence, or malpractice which results in  
22 injury to a patient or which creates an unreasonable risk that a  
23 patient may be harmed. The use of a nontraditional treatment by itself  
24 shall not constitute unprofessional conduct, provided that it does not  
25 result in injury to a patient or create an unreasonable risk that a  
26 patient may be harmed;

27 (5) Suspension, revocation, or restriction of the individual's  
28 license to practice any health care profession by competent authority  
29 in any state, federal, or foreign jurisdiction, a certified copy of the  
30 order, stipulation, or agreement being conclusive evidence of the  
31 revocation, suspension, or restriction;

32 (6) The possession, use, prescription for use, or distribution of  
33 controlled substances or legend drugs in any way other than for  
34 legitimate or therapeutic purposes, diversion of controlled substances  
35 or legend drugs, the violation of any drug law, or prescribing  
36 controlled substances for oneself;

37 (7) Violation of any state or federal statute or administrative

1 rule regulating the profession in question, including any statute or  
2 rule defining or establishing standards of patient care or professional  
3 conduct or practice;

4 (8) Failure to cooperate with the disciplining authority by:

5 (a) Not furnishing any papers (~~(or)~~), documents, records, or other  
6 items;

7 (b) Not furnishing in writing a full and complete explanation  
8 covering the matter contained in the complaint filed with the  
9 disciplining authority;

10 (c) Not responding to subpoenas issued by the disciplining  
11 authority, whether or not the recipient of the subpoena is the accused  
12 in the proceeding; or

13 (d) Not providing reasonable and timely access for authorized  
14 representatives of the disciplining authority seeking to perform  
15 practice reviews at facilities utilized by the license holder;

16 (9) Failure to comply with an order issued by the disciplining  
17 authority or a stipulation for informal disposition entered into with  
18 the disciplining authority;

19 (10) Aiding or abetting an unlicensed person to practice when a  
20 license is required;

21 (11) Violations of rules established by any health agency;

22 (12) Practice beyond the scope of practice as defined by law or  
23 rule;

24 (13) Misrepresentation or fraud in any aspect of the conduct of the  
25 business or profession;

26 (14) Failure to adequately supervise auxiliary staff to the extent  
27 that the consumer's health or safety is at risk;

28 (15) Engaging in a profession involving contact with the public  
29 while suffering from a contagious or infectious disease involving  
30 serious risk to public health;

31 (16) Promotion for personal gain of any unnecessary or  
32 inefficacious drug, device, treatment, procedure, or service;

33 (17) Conviction of any gross misdemeanor or felony relating to the  
34 practice of the person's profession. For the purposes of this  
35 subsection, conviction includes all instances in which a plea of guilty  
36 or nolo contendere is the basis for conviction and all proceedings in  
37 which the sentence has been deferred or suspended. Nothing in this  
38 section abrogates rights guaranteed under chapter 9.96A RCW;

1 (18) The procuring, or aiding or abetting in procuring, a criminal  
2 abortion;

3 (19) The offering, undertaking, or agreeing to cure or treat  
4 disease by a secret method, procedure, treatment, or medicine, or the  
5 treating, operating, or prescribing for any health condition by a  
6 method, means, or procedure which the licensee refuses to divulge upon  
7 demand of the disciplining authority;

8 (20) The willful betrayal of a practitioner-patient privilege as  
9 recognized by law;

10 (21) Violation of chapter 19.68 RCW;

11 (22) Interference with an investigation or disciplinary proceeding  
12 by willful misrepresentation of facts before the disciplining authority  
13 or its authorized representative, or by the use of threats or  
14 harassment against any patient or witness to prevent them from  
15 providing evidence in a disciplinary proceeding or any other legal  
16 action, or by the use of financial inducements to any patient or  
17 witness to prevent or attempt to prevent him or her from providing  
18 evidence in a disciplinary proceeding;

19 (23) Current misuse of:

- 20 (a) Alcohol;
- 21 (b) Controlled substances; or
- 22 (c) Legend drugs;

23 (24) Abuse of a client or patient or sexual contact with a client  
24 or patient;

25 (25) Acceptance of more than a nominal gratuity, hospitality, or  
26 subsidy offered by a representative or vendor of medical or health-  
27 related products or services intended for patients, in contemplation of  
28 a sale or for use in research publishable in professional journals,  
29 where a conflict of interest is presented, as defined by rules of the  
30 disciplining authority, in consultation with the department, based on  
31 recognized professional ethical standards.

32 **Sec. 12.** RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read  
33 as follows:

34 (1) Subject to the exceptions in subsections (3) and (4) of this  
35 section, and unless there is another provision of law to the contrary,  
36 a person is not disqualified from employment by the state of Washington  
37 or any of its counties, cities, towns, municipal corporations, or

1 quasi-municipal corporations, nor is a person disqualified to practice,  
2 pursue or engage in any occupation, trade, vocation, or business for  
3 which a license, permit, certificate, or registration is required to be  
4 issued by the state of Washington or any of its counties, cities,  
5 towns, municipal corporations, or quasi-municipal corporations solely  
6 because of a prior conviction of a felony. However, this section does  
7 not preclude the fact of any prior conviction of a crime from being  
8 considered.

9 (2) A person may be denied employment by the state of Washington or  
10 any of its counties, cities, towns, municipal corporations, or quasi-  
11 municipal corporations, or a person may be denied a license, permit,  
12 certificate or registration to pursue, practice, or engage in an  
13 occupation, trade, vocation, or business by reason of the prior  
14 conviction of a felony if the felony for which he or she was convicted  
15 directly relates to the position of employment sought or to the  
16 specific occupation, trade, vocation, or business for which the  
17 license, permit, certificate, or registration is sought, and the time  
18 elapsed since the conviction is less than ten years. However, for  
19 positions in the county treasurer's office, a person may be  
20 disqualified from employment because of a prior guilty plea or  
21 conviction of a felony involving embezzlement or theft, even if the  
22 time elapsed since the guilty plea or conviction is ten years or more.

23 (3) A person is disqualified for any certificate required or  
24 authorized under chapters 28A.405 or 28A.410 RCW, because of a prior  
25 guilty plea or the conviction of a felony involving sexual exploitation  
26 of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44  
27 RCW where a minor is the victim, promoting prostitution of a minor  
28 under chapter 9A.88 RCW, or a violation of similar laws of another  
29 jurisdiction, even if the time elapsed since the guilty plea or  
30 conviction is ten years or more.

31 (4) A person is disqualified from employment by school districts,  
32 educational service districts, and their contractors hiring employees  
33 who will have regularly scheduled unsupervised access to children,  
34 because of a prior guilty plea or conviction of a felony involving  
35 sexual exploitation of a child under chapter 9.68A RCW, sexual offenses  
36 under chapter 9A.44 RCW where a minor is the victim, promoting  
37 prostitution of a minor under chapter 9A.88 RCW, or a violation of

1 similar laws of another jurisdiction, even if the time elapsed since  
2 the guilty plea or conviction is ten years or more.

3 (5) The provisions of this chapter do not apply to issuance of  
4 licenses or credentials for professions regulated under chapter 18.130  
5 RCW.

6 (6) Subsections (3) and (4) of this section only apply to a person  
7 applying for a certificate or for employment on or after July 25, 1993.  
8 Subsection (5) of this section only applies to a person applying for a  
9 license or credential on or after the effective date of this section.

10 **Sec. 13.** RCW 9.95.240 and 2003 c 66 s 1 are each amended to read  
11 as follows:

12 (1) Every defendant who has fulfilled the conditions of his or her  
13 probation for the entire period thereof, or who shall have been  
14 discharged from probation prior to the termination of the period  
15 thereof, may at any time prior to the expiration of the maximum period  
16 of punishment for the offense for which he or she has been convicted be  
17 permitted in the discretion of the court to withdraw his or her plea of  
18 guilty and enter a plea of not guilty, or if he or she has been  
19 convicted after a plea of not guilty, the court may in its discretion  
20 set aside the verdict of guilty; and in either case, the court may  
21 thereupon dismiss the information or indictment against such defendant,  
22 who shall thereafter be released from all penalties and disabilities  
23 resulting from the offense or crime of which he or she has been  
24 convicted. The probationer shall be informed of this right in his or  
25 her probation papers: PROVIDED, That in any subsequent prosecution,  
26 for any other offense, such prior conviction may be pleaded and proved,  
27 and shall have the same effect as if probation had not been granted, or  
28 the information or indictment dismissed.

29 (2)(a) After the period of probation has expired, the defendant may  
30 apply to the sentencing court for a vacation of the defendant's record  
31 of conviction under RCW 9.94A.640. The court may, in its discretion,  
32 clear the record of conviction if it finds the defendant has met the  
33 equivalent of the tests in RCW 9.94A.640(2) as those tests would be  
34 applied to a person convicted of a crime committed before July 1, 1984.

35 (b) The clerk of the court in which the vacation order is entered  
36 shall immediately transmit the order vacating the conviction to the  
37 Washington state patrol identification section and to the local police

1 agency, if any, which holds criminal history information for the person  
2 who is the subject of the conviction. The Washington state patrol and  
3 any such local police agency shall immediately update their records to  
4 reflect the vacation of the conviction, and shall transmit the order  
5 vacating the conviction to the federal bureau of investigation. A  
6 conviction that has been vacated under this section may not be  
7 disseminated or disclosed by the state patrol or local law enforcement  
8 agency to any person, except other criminal justice enforcement  
9 agencies.

10 (3) This section does not apply to chapter 18.130 RCW.

11 NEW SECTION. Sec. 14. Sections 2 and 4 of this act are each added  
12 to chapter 18.130 RCW."

**SHB 1300** - S COMM AMD

By Committee on Health & Long-Term Care

13 On page 1, line 1 of the title, after "penalties;" strike the  
14 remainder of the title and insert "amending RCW 18.130.040, 18.130.050,  
15 18.130.140, 18.130.150, 18.130.165, 18.130.170, 18.130.172, 18.130.180,  
16 9.96A.020, and 9.95.240; reenacting and amending RCW 18.130.160; adding  
17 new sections to chapter 18.130 RCW; and prescribing penalties."

--- END ---